

changes proposed in this Fourth FNPRM.

16. *Private Land Mobile Radio Licensees (PLMR)*. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by entities of all sizes operating in all U.S. business and public sector categories, and are often used in support of the licensee's primary (non-telecommunications) operations. For the purpose of determining whether a licensee of a PLMR system is a small entity as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons. The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business and governmental activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.

17. As of May 2012, there were approximately 220 PLMR licensees operating in the PLMR band between 806–824/851–869 MHz along the U.S.—Mexico border. We note that many government and commercial actors are eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

#### *D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements*

18. The *Fourth FNPRM* does not propose a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts beyond those already approved for this proceeding. See OMB Control No. 3060–1080 for Improving Public Safety Communications in the 800 MHz Band (exp. September 30, 2014).

#### *E. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered*

19. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) The establishment of

differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.

20. The *Fourth FNPRM* will create no significant economic impact on small entities because Sprint Nextel Corporation will pay all reasonable costs associated with retuning incumbent licensees to the post-reconfiguration channel plans proposed by the Bureau. Further, once the channel plans proposed in the *Fourth FNPRM* are implemented, licensees will no longer be subject to on-going interference in the band and will therefore save costs that would otherwise be associated with resolving interference. Finally, the Bureau specifically seeks comment on alternatives to the proposed channel plans it proposes and will consider such alternatives as may be recommended in comments to the *Fourth FNPRM*.

#### *F. Federal Rules That May Duplicate, Overlap, or Conflict With the Proposed Rules*

21. None.

#### **Ordering Clauses**

22. Accordingly, *it is ordered*, pursuant to sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 332, that this *Fourth Further Notice of Proposed Rulemaking is adopted*.

23. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Fourth Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

Federal Communications Commission.

**David S. Turetsky,**

*Chief, Public Safety and Homeland Security Bureau.*

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## **DEPARTMENT OF TRANSPORTATION**

### **Pipeline and Hazardous Materials Safety Administration**

#### **49 CFR Parts 107, 172, and 173**

[Docket No. PHMSA–2010–0320 (HM–257)]

RIN 2137–AE70

#### **Hazardous Materials: Revision to Fireworks Regulations (RRR)**

**AGENCY:** Pipeline and Hazardous Materials Safety Administration (PHMSA), DOT.

**ACTION:** Notice of proposed rulemaking (NPRM).

**SUMMARY:** PHMSA is proposing to revise the Hazardous Materials Regulations applicable to the approval of Division 1.4G consumer fireworks (UN0336 Fireworks) and establish DOT-approved fireworks certification agencies that will provide an alternative to the approval process for Division 1.4G consumer fireworks. PHMSA is also proposing to revise procedural regulations pertaining to certification agencies. These proposed actions, if adopted, will clarify regulations with respect to PHMSA's fireworks approval process and provide regulatory flexibility in seeking authorization for the transportation of Division 1.4G consumer fireworks.

**DATES:** Comments must be received by October 29, 2012. To the extent possible, PHMSA will consider late-filed comments as a final rule is developed.

**ADDRESSES:** You may submit comments by identification of the docket number (PHMSA–2010–0320 (HM–257)) by any of the following methods:

- *Federal eRulemaking Portal:* Go to <http://www.regulations.gov>. Follow the online instructions for submitting comments.

- *Fax:* 1–202–493–2251.

- *Mail:* Docket Operations, U.S.

Department of Transportation, West Building, Ground Floor, Room W12–140, Routing Symbol M–30, 1200 New Jersey Avenue, SE., Washington, DC 20590.

- *Hand Delivery:* To Docket Operations, Room W12–140 on the ground floor of the West Building, 1200 New Jersey Avenue SE., Washington, DC 20590, between 9 a.m. and 5 p.m., Monday through Friday, except Federal holidays.

*Instructions:* All submissions must include the agency name and docket number for this notice at the beginning of the comment. All comments received will be posted without change to the Federal Docket Management System

(FDMS), including any personal information.

*Docket:* For access to the dockets to read background documents or comments received, go to <http://www.regulations.gov> or DOT's Docket Operations Office (see **ADDRESSES**).

**FOR FURTHER INFORMATION CONTACT:** Rob Benedict, or Lisa O'Donnell, Standards and Rulemaking Division, Office Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, at (202) 366-8553.

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**I. Executive Summary**

The pyrotechnic industry is a global logistics supply chain comprised of mostly foreign fireworks manufacturers and domestic importers, retailers, distributors, and consumers. Prior to the transportation into and throughout the U.S., all explosives, including Division 1.4 consumer fireworks, must be classed, approved, and issued a DOT EX classification approval number (EX number) by PHMSA. The EX number is a unique identifier that indicates a firework device has been classed and approved for transportation into and throughout the U.S.

PHMSA is committed to maintaining the exemplary transportation safety

record that Division 1.4G consumer fireworks have displayed over the past forty years, but seeks to reduce burden and increase flexibility for the regulated community by providing an alternative to PHMSA's approval process. PHMSA has conducted an intensive retrospective review of the fireworks approval program and has determined that there is a delay in the processing of EX approval applications under the current regulatory scheme. PHMSA proposes an alternative option for Division 1.4G consumer fireworks in which applicants will submit applications for certification to a Fireworks Certification Agency (FCA), in lieu of submitting applications for approval to PHMSA. To ensure oversight of the proposed FCAs, this proposal includes reporting and recordkeeping requirements.

Additionally, PHMSA is proposing to define consumer fireworks and clarify the approval process for designation as a certification agency.

This NPRM affects the following entities and proposes the following requirements:

Affected entities	Proposals
<ul style="list-style-type: none"> <li>• Division 1.4G consumer fireworks manufacturers complying with Part 173.</li> <li>• Division 1.4G consumer fireworks importers complying with Part 173</li> <li>• Division 1.4G consumer fireworks transporters complying with Part 173.</li> <li>• FCAs certifying compliance with the requirements for Division 1.4G consumer fireworks.</li> <li>• State and local fire service and law enforcement agencies that utilize Division 1.4G consumer fireworks classifications and approvals under the HMR to enforce additional state and local requirements and bans.</li> <li>• Lighter Testing Agencies.</li> <li>• Package Testing Laboratories.</li> </ul>	<ul style="list-style-type: none"> <li>• Provide for alternative method to certify Division 1.4G consumer fireworks for transportation.</li> <li>• Require retention of a record by certifying agencies, manufacturers and importers indicating a Division 1.4G consumer fireworks classification has been certified in a manner consistent with the proposed requirements.</li> <li>• Clarify approval process for designation as a certification agency and provide for reconsideration of decisions to modify, terminate, or suspend a designation.</li> </ul>

To monetize the costs and benefits of the proposals in this NPRM, PHMSA used a number of assumptions to develop a base case. The overall costs and benefits of the proposals are dependent on the assumption that all affected entities are currently complying with the regulations and that 50 to 90 percent of applicants will choose a DOT-approved FCA to certify that Division 1.4G consumer fireworks complies with the American Pyrotechnics Association's (APA) Standard 87-1 (IBR, see § 171.7), in lieu of filing an approval application with PHMSA.<sup>1</sup> We believe this alternative

process will be attractive to the fireworks industry as it will expedite the transportation process without compromising the current level of safety, enable shipments of Division 1.4G consumer fireworks to reach the market in a more timely manner, and consequently provide a cost savings. Cost in this scenario, includes the cost attributed to shipments that are delayed while approval applications are pending with PHMSA.

Costs associated with the proposals are primarily comprised of fees that FCAs may assess on manufacturers of Division 1.4G fireworks. There may also be costs associated with proposed

recordkeeping requirements.<sup>2</sup> Benefits will be derived from the expedited processing of consumer fireworks applications, resulting in faster time to market for each firework device. PHMSA estimates that the economic effects of this rulemaking, once finalized and adopted, will be sustained indefinitely. However, because of the difficulty of and uncertainty associated with forecasting industry effects into the far future, we assume a 10-year timeframe to outline, quantify, and monetize the costs and benefits of the

<sup>1</sup> PHMSA based the percentage range (fifty to ninety percent) used in this rulemaking on the fact that over eighty percent of firework importers and manufacturers voluntarily participate in American Fireworks Standards Laboratory (AFSL) testing program to comply with the Consumer Product Safety Commission (CPSC) requirements. A range

was chosen to demonstrate some level of uncertainty and to provide a tolerance for fluctuations in use of FCAs.

<sup>2</sup> PHMSA assumed that, absent relevant information on document retention practices of the fireworks industry, 50 percent of records will be stored in paper format and 50 percent of records will be stored in electronic format. Based on this assumption PHMSA estimated the record keeping cost to be approximately \$610 per U.S. importer/manufacturer per year.

proposals and to demonstrate the net effects of the proposals.  
If the proposals in this NPRM are adopted, PHMSA estimates total annual

benefits will be between approximately \$14.5 million and \$26.5 million, and total annual costs will be between \$4 million and \$7 million, resulting in total

annual net benefits of between \$11 million and \$19 million. The table below summarizes the calculated cost and benefits associated with the NPRM.

ANNUAL NET BENEFITS

	Low redirected application rate (50%)	High redirected application rate (90%)
<b>BENEFITS</b>		
Expected Annual Private-Sector Benefits of Expedited Verification .....	\$14,680,000	\$26,430,000
<b>TOTAL ANNUAL BENEFITS</b> .....	<b>14,680,000</b>	<b>26,430,000</b>
<b>COSTS</b>		
Record Retention Costs:		
Costs of 2 Additional Years of Paper Record Retention, All U.S. Importers per year .....	10,200	58,000
Cost for Required Electronic Storage Space, All U.S. Importers and Manufacturers per year .....	Negligible	Negligible
Total Annual Record Retention Costs .....	10,200	58,000
FCA Processing Costs:		
Costs of application processing conducted by FCAs ** .....	3,937,500	7,087,500
Total Annual FCA Processing Costs .....	3,937,500	7,087,500
<b>TOTAL ANNUAL COSTS</b> .....	<b>3,947,700</b>	<b>7,145,500</b>
<b>TOTAL ANNUAL NET BENEFITS</b> .....	<b>10,732,300</b>	<b>19,284,500</b>

PHMSA estimates the 10-year present value of the net benefits is about \$80 million to \$143 million (discounted at a 3 percent rate) or \$55 million to \$98 million (discounted at a 7 percent rate). PHMSA concludes that the aggregate benefits justify the aggregate costs. A summary of the range of expected annual costs and benefits is provided in the table below.<sup>3</sup>

Annual Benefit (\$2012)	\$14.5–26.5 million.
Annual Cost (\$2012) ....	\$4–7 million.
Benefit-Cost Ratio .....	3.70–3.71.
Net Benefit .....	\$11–19 million.

PHMSA requests specific comments on the analysis underlying these estimates, including the percentage of entities that will choose to have their 1.4G consumer fireworks certified by FCAs instead of being approved by PHMSA, the manner in which records will be kept (i.e., electronic or paper), the estimated cost of the recordkeeping requirements, the number of affected entities (e.g., manufacturers and importers), and the estimated fee an FCA would charge for certification. We are also asking for general comments or suggestions regarding approaches to reduce the costs of this rule while maintaining or increasing the benefits. Additionally, PHMSA seeks comments on possible changes that might improve

the rule and increase regulatory flexibility.

**II. Background**

The requirements for the classification and packaging of Class 1 explosive materials are specified in Subpart C of Part 173 of the Hazardous Materials Regulations (HMR; 49 CFR parts 171–180). Fireworks are considered a Class 1 explosive material and must be classified under one of five hazard divisions and compatibility groups (1.1G, 1.2G, 1.3G, 1.4G, and 1.4S). As currently specified in Subpart C of Part 173 of the HMR, prior to transportation into and within the U.S., all explosives, including fireworks, must be approved and assigned a classification by PHMSA based on actual testing. Division 1.3 and 1.4 fireworks may also be approved in accordance with the American Pyrotechnics Association (APA) Standard 87–1.

*PHMSA's Current Fireworks Regulations*

Division 1.1 fireworks must be examined by a DOT-approved explosives test laboratory and assigned a recommended shipping description, division, and compatibility group in accordance with §§ 173.56(b), 173.56(f) or 173.56(i). Division 1.3 and 1.4 fireworks may either be approved in accordance with §§ 173.56(b), 173.56(f) or 173.56(i), or in accordance with

§ 173.56(j), which provides an option for obtaining an EX number and approval without prior testing by a DOT-approved explosives test laboratory.

Section 173.56(j) requires that the firework device is manufactured in accordance with APA Standard 87–1 and passes a thermal stability test. An applicant requesting PHMSA approval based on § 173.56(j) submits an application that contains required information specified in APA Standard 87–1. For example, the standard requires that the size of the device, as well as the various formulas and weights of each type of chemical composition contained in the device must be specified in the application. Only formulas containing chemicals identified in APA Standard 87–1, Table of “Standard Fireworks Chemicals” can be approved under the provisions of APA Standard 87–1. PHMSA has expanded on the Table of “Standard Fireworks Chemicals” to further detail chemicals that are permitted and prohibited in consumer fireworks devices.<sup>4</sup> The manufacturer must submit a signed application with a detailed diagram of the device and certify that

<sup>4</sup> PHMSA's expanded list of permitted and prohibited chemicals for consumer fireworks devices can be found at the following URL: <http://www.phmsa.dot.gov/staticfiles/PHMSA/DownloadableFiles/Hazmat/Regulations/Approved%20and%20Prohibited%20Fireworks%20Chemicals-02-21-2012.pdf>.

<sup>3</sup> Figures are rounded.

the device complies with APA Standard 87–1.

While both §§ 173.56(b) and 173.56(j) require the applicant to submit an application to PHMSA's Approvals and Permits Division for approval, the HMR provides a couple of alternatives. Under § 173.56(i), if experience or other data demonstrates that the hazard of a firework device containing an explosive chemical composition is greater or less than indicated according to the definition and criteria specified in §§ 173.50, 173.56, and 173.58, the Associate Administrator may specify a classification (including determining that it is forbidden from transportation), or except the device from the HMR. The HMR also permits the transport of firework devices the Associate Administrator approves on the basis of an approval issued by the competent authority of a foreign government, or when examination of the explosive by a person approved by the Associate Administrator is impracticable, on the basis of reports of tests conducted by disinterested third parties, as specified in § 173.56(f).

#### *Regulatory Review of PHMSA's Fireworks Program*

On May 10, 2012, President Obama issued Executive Order 13610 (Identifying and Reducing Regulatory Burdens) reaffirming the goals of Executive Order 13563 (Improving Regulation and Regulatory Review) issued January 18, 2011, and Executive Order 12866 (Regulatory Planning and Review) issued September 30, 1993. Executive Order 13610 directs agencies to prioritize “those initiatives that will produce significant quantifiable monetary savings or significant quantifiable reductions in paperwork burdens while protecting public health, welfare, safety, and our environment.” Executive Order 13610 further instructs agencies to give consideration to the cumulative effects of their regulations, including cumulative burdens, and prioritize reforms that will significantly reduce burdens.

Executive Order 13563, which supplements Executive Order 12866, directs federal agencies to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and modify, streamline, expand, or repeal regulatory requirements that are no longer justified. Agencies are also directed to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public.

In light of these Executive Orders and the President's continued efforts to

streamline government regulations, we have evaluated our fireworks approval program to identify areas where we can improve efficiency, reduce burdens, and increase regulatory flexibility without diminishing safety. Specifically, we analyzed the timeline for reviewing applications for approval of fireworks devices. We found that over the past two years, PHMSA has reviewed roughly 30,000 applications for approval of fireworks devices. Approximately seventy-five percent of these applications sought approval for Division 1.4G consumer fireworks devices.

Due to the high volume of applications submitted for Division 1.4G consumer fireworks devices, the approximate review time per application is 120 days. Review time may be extended if applications are rejected for minor flaws, such as mathematical errors, or denied for safety issues. If an application is rejected, the applicant often resubmits the application placing it at the end of the review queue. If an application is denied, the applicant may file for reconsideration and subsequently may appeal to the Administrator; thereby delaying the final disposition of the application.

Consequently, the delay in processing applications can have an economic impact on the fireworks industry. For example, the lengthy approval process interrupts the supply chain and delays devices from reaching retail stores, which results in substantial revenue losses for U.S. importers, distributors and retail stores, many of whom are small businesses. Also, manufacturers of fireworks devices often charge U.S. purchasers storage fees for devices purchased that are pending approval and cannot be transported into and throughout the U.S.

After significant review of our fireworks program, we have identified areas that should be modified to decrease the delay in processing approvals. PHMSA is proposing to revise the HMR to provide an alternative option that will expedite the process for obtaining authorization to transport Division 1.4G consumer fireworks into and throughout the U.S., without compromising the current level of safety. PHMSA believes the revisions proposed in this NPRM will reduce burdens and enhance flexibility for the regulated community, while maintaining an equivalent level of safety provided in the HMR.<sup>5</sup>

<sup>5</sup> Over the past forty years, there have been 35 reported transportation incidents in the U.S. involving fireworks that were declared hazardous

### **III. Proposed Amendments**

In an effort to reduce regulatory burden and provide regulatory flexibility, without diminishing safety, PHMSA proposes structural changes to the regulations relating to PHMSA's fireworks program. Under the proposed revision, PHMSA will continue to approve Division 1.4G consumer fireworks in accordance with the current requirements specified in §§ 173.56(b), 173.56(f), 173.56(i), or 173.56(j). In addition to the current approval process, PHMSA proposes a new alternative that will permit manufacturers to apply to a DOT-approved Fireworks Certification Agency (FCA) to review and certify that Division 1.4G consumer fireworks comply with APA Standard 87–1 and are safe for transportation in commerce. To provide oversight of the DOT-approved FCAs, PHMSA is proposing reporting and recordkeeping requirements. PHMSA is also proposing to revise subpart E of part 107 to clarify the approval process for designation as a certification agency and provide for reconsideration of decisions to modify, terminate, or suspend a designation.

#### *Fireworks Certification Agency (FCA)*

The proposed alternative process for Division 1.4G consumer fireworks will parallel the current requirements under § 173.56(j), except that, rather than submitting an approval application to PHMSA, the manufacturer or their U.S. designated agent will submit a certification application to a DOT-approved FCA to review and certify that the firework devices match the chemical compositions, sizes, and weights detailed in the application and that they meet the defining criteria set forth in APA Standard 87–1 to be classified as a Division 1.4G consumer firework.

In addition, PHMSA proposes to require the DOT-approved FCA conduct a physical examination of a sample of the Division 1.4G consumer firework design. This proposal is consistent with the requirements for other DOT-approved certification agencies. A DOT-approved FCA will be analogous to lighter certification agencies, which certify lighter designs, and independent

materials. During this same period, there has never been a death or major injury attributed to fireworks while in transportation when there was compliance with the regulations. While there have been two incidents that resulted in fatalities in that forty year period, both involved the improper setup or storage of display fireworks, and were not attributed to the transportation of Division 1.4G consumer fireworks. Detailed hazardous materials incident reports for hazardous materials incidents specified in § 171.16 may be found at the PHMSA Web site at the following URL: <https://hazmatonline.phmsa.dot.gov/IncidentReportsSearch/Search.aspx>.

inspection agencies, which evaluate and certify cylinder manufacturers. These entities physically examine the product (i.e., lighters or cylinders) to determine whether the product meets certain criteria specified in the HMR to ensure safe transportation of the product. Likewise, PHMSA proposes to require the DOT-approved FCAs physically examine a sample of the Division 1.4G consumer firework design type prior to initial shipment to determine whether the device meets the requirements of APA Standard 87-1 and matches the dimensions, chemical composition, and device type specified in the application for certification.

To become a DOT-approved FCA, the applicant will be required to submit an application with all procedures it will use to review and certify Division 1.4G consumer fireworks, in accordance with the provisions in subpart E of part 107. These procedures will be designed by the applicant; however, PHMSA will review the applicant's procedures to determine whether they are adequate to certify compliance with APA-Standard 87-1 and whether they provide an equivalent or greater level of safety to the current approval process. PHMSA plans to develop a guidance document for FCAs addressing standard procedures for the certification of Division 1.4G consumer fireworks.

Any domestic or foreign entity may apply to become a DOT-approved FCA provided that it is not directly or indirectly controlled by, or have a financial involvement with, any entity that manufactures, transports, or imports fireworks, except for providing services as an FCA. To qualify as a DOT-approved FCA, each applicant must: (1) Meet specific criteria designed to ensure that the FCA is an impartial, independent, unbiased, and qualified entity; (2) submit an application, including certification procedures; and (3) successfully complete a facility inspection performed by PHMSA. To meet the specific qualification criteria, the applicant will be required to demonstrate knowledge of the applicable regulations, including subpart C of part 173 of the HMR and the APA standard 87-1, the ability to review and evaluate design drawings and applications in accordance with the APA standard 87-1, and the ability to review and evaluate the qualifications of materials and fabrication procedures. If approved, PHMSA will issue an approval and an identifying number unique to that FCA. This number will provide traceability and enable PHMSA to seek corrective action or suspend or terminate certification authority if the

requirements of the HMR or the FCA approval are not met.

#### *Fireworks Identification Scheme*

Currently, all Division 1.4G fireworks devices are approved by PHMSA and assigned an EX number that represents that the fireworks article or device is in compliance with the classification requirements of the HMR. A current EX number approval begins with the letters "EX" followed by the year of issuance (e.g. 2012), the month of issuance, (e.g. 07), and the approval number issued that month, where "0001" indicates the first approval of the month. An example of the entire string of numbers appears as follows: "EX2012070001."

To differentiate between an approval issued by PHMSA and a DOT-approved FCA certification, PHMSA proposes to use an FX numbering scheme. Instead of issuing an EX number and approval through PHMSA for a fireworks device, which is an inherently governmental function that cannot be reassigned, the DOT-approved FCA will issue a unique identifier (FX number) for devices it certifies as Division 1.4G consumer fireworks. The FX number will identify the DOT-approved FCA, the device, and the manufacturer. An example of an FX number would be "FX123-456." In this example "123" will correspond to the DOT-approved FCA conducting the review and certification. This portion of the numbering sequence will be issued to the FCA by PHMSA. The "456" will represent a unique certification identifier traceable to both the manufacturer of the Division 1.4G consumer firework device and the device itself. This portion of the numbering sequence will be issued by the DOT-approved FCA. Each Division 1.4G consumer firework certified in this manner will be required to be marked and labeled in accordance with subpart D and E of part 172. As with EX numbers, marking the package with the FX number will not be required provided the FX number for each fireworks device is indicated on an accompanying shipping paper. The introduction of the FX numbering scheme will result in some Division 1.4G consumer fireworks being assigned an EX number when approved by PHMSA, and others being assigned an FX number when certified by a DOT-approved FCA.

Given the long history and wide recognition of the EX numbering scheme, PHMSA seeks specific comments on the supply chain implications, the economic impact and safety concerns associated with the proposed FX numbering system, as well as comments on how to implement the

changes if they are adopted. For example, will the use of different alpha designators (i.e., EX and FX) pose complications or confusion within the transportation system?

PHMSA also seeks comments regarding alternative methods that may be used to identify Division 1.4G consumer fireworks devices that have been certified by a DOT-approved FCA, including suggestions in the alpha-numeric sequence that will facilitate transport while providing a clear distinction between PHMSA approved devices and devices certified by an FCA as compliant with APA standard 87-1.

#### *Reporting and Recordkeeping Requirements*

PHMSA is proposing specific reporting and recordkeeping requirements to ensure that the DOT-approved FCAs are correctly certifying Division 1.4G consumer fireworks and are in compliance with the HMR and the FCA approval. As a condition of the FCA approval, each DOT-approved FCA will be required to submit to PHMSA electronic reports of the results of all devices submitted for certification on a schedule specified in the approval.

Additionally, for each firework device certified and issued an FX number, the DOT-approved FCA that reviewed the application, the manufacturer, and the importer will be required to maintain the device's thermal stability test report and a copy of the application. Currently, most consumer fireworks manufactured or assembled in the U.S. and those imported into the U.S. are voluntarily tested to ensure that they comply with the Consumer Product Safety Commission (CPSC) requirements. The testing facility, the manufacturers, and the importers utilizing this voluntary process are required to maintain records of these tests for three years.<sup>6</sup> As it is current industry practice for importers to maintain similar records under the CPSC requirements, there will be limited additional paperwork burden for importers. The DOT-approved FCA will also be required to maintain a copy of the certification procedures used for each device certified. We propose that

<sup>6</sup> Importers and domestic manufacturers participating in a voluntary program implemented by American Fireworks Standards Laboratory (AFSL) may use the test results obtained from AFSL to support certifications that the tested fireworks comply with all rules, bans, standards, or regulations applicable under the Consumer Product Safety Improvement Act of 2008. AFSL estimates that over 80% of U.S. importers and manufacturers currently utilize this voluntary program. All Participants in this voluntary program must maintain all records and documents for three (3) years from date of generation. See [http://www.afsl.org/images/Domestic\\_Certification\\_Program\\_Final\\_012511.pdf](http://www.afsl.org/images/Domestic_Certification_Program_Final_012511.pdf) (last visited June 12, 2012).

FCAs, manufacturers and importers maintain these records for a period of five years; however, PHMSA will maintain the records for up to 10 years consistent with current practices for other approvals. The Associate Administrator, or designated official, may inspect the DOT-approved FCA's facilities and records to verify compliance with the recordkeeping requirements, the HMR, and the FCA approval.

PHMSA recognizes that under the proposed system manufacturers or their U.S. designated agents may attempt to submit duplicate applications to both a DOT-approved FCA and to PHMSA concurrently. As this new process is designed to promote efficiency while maintaining safety, the submission of duplicate applications under both processes may result in confusion, slower processing, and diminished safety. With this in mind, PHMSA proposes to require a signed certification statement on all applications submitted to either PHMSA or a DOT-approved FCA stating that an application was not submitted to any other entity. PHMSA will be able to verify that duplicative applications are not being submitted by reviewing the certification reports the DOT-approved FCAs will be required to submit to PHMSA. If a manufacturer or its U.S. designated agent submits identical applications to both a DOT-approved FCA and PHMSA, the manufacturer and its U.S. designated agent will be in violation of the HMR and the approval and may be fined under 18 United States Code, or imprisoned for not more than 5 years, or both, except the maximum amount of imprisonment may be 10 years in any case in which the violation involves the release of a hazardous material which results in death or bodily injury to any person (See § 107.333).

PHMSA anticipates that the proposed alternative certification process will reduce the processing time that it takes to evaluate an application. As a result, economic burdens caused by a delay in processing approvals will be reduced. Further, it may also promote innovation and potentially create new jobs, as currently no DOT-approved FCAs exist. Additionally, PHMSA will continue to require that Division 1.4G consumer fireworks comply with all other requirements in the HMR, including the shipping paper, marking, labeling, placarding, and incident reporting

requirements to ensure safety is not diminished.

Should the proposed alternative option be adopted in a future rulemaking, PHMSA plans to develop a guidance document addressing standard operating procedures for the certification of Division 1.4G consumer fireworks. The publication of this guidance document will coincide with the final rule publication.

PHMSA seeks general comments on the proposed changes to the fireworks program. PHMSA seeks specific comments on the need for revision of the fireworks program, the economic impact of the proposed changes, safety concerns associated with the proposed changes, as well as comments on how to implement the changes if they are adopted. PHMSA also seeks comments on whether the proposed record retention period of five years is adequate or if the retention period should be expanded to address the longer shelf life of some consumer fireworks. In addition, PHMSA invites all stakeholders and affected entities, including the CPSC, the Bureau of Alcohol, Tobacco, Firearms and Explosives, Customs and Border Patrol, and state and/or local fire and police departments to comment on the proposals.

#### **IV. Summary Review of Proposed Amendments**

In an effort to reduce regulatory burden and provide industry more flexibility, we are proposing structural changes to the regulations relating to PHMSA's fireworks program. Specifically, PHMSA proposes to revise the requirements in five sections (§§ 107.402, 107.403, 172.320, 173.56 and 173.59), add two new sections (§§ 173.64 and 173.65), and reserve one section (§ 107.405). The specific revisions and additions to these sections are detailed below by topic.

##### *Fireworks Approval Program*

We propose moving the current requirements of § 173.56(j) to a standalone new § 173.64 entitled "Exceptions for Division 1.3 and 1.4 Fireworks." In addition, we propose the addition of a new § 173.65 entitled "Exceptions for Division 1.4G Consumer Fireworks" that will detail the alternative certification process for Division 1.4G consumer fireworks. To correspond to the changes proposed in this NPRM, we will revise the entry

"UN0336 Fireworks" in § 172.101 Hazardous Materials Table. Further, a definition for "consumer firework" will be added to § 173.59. No modifications are proposed for §§ 173.56(f) and 173.56(i).

The hazard communication requirements for Division 1.4G consumer fireworks will be specified in paragraph (c) of the new § 173.65 and the revised § 172.320. Specifically, § 172.320 will be revised to reflect the addition of FX numbers.

##### *Fireworks Certification Agency (FCA)*

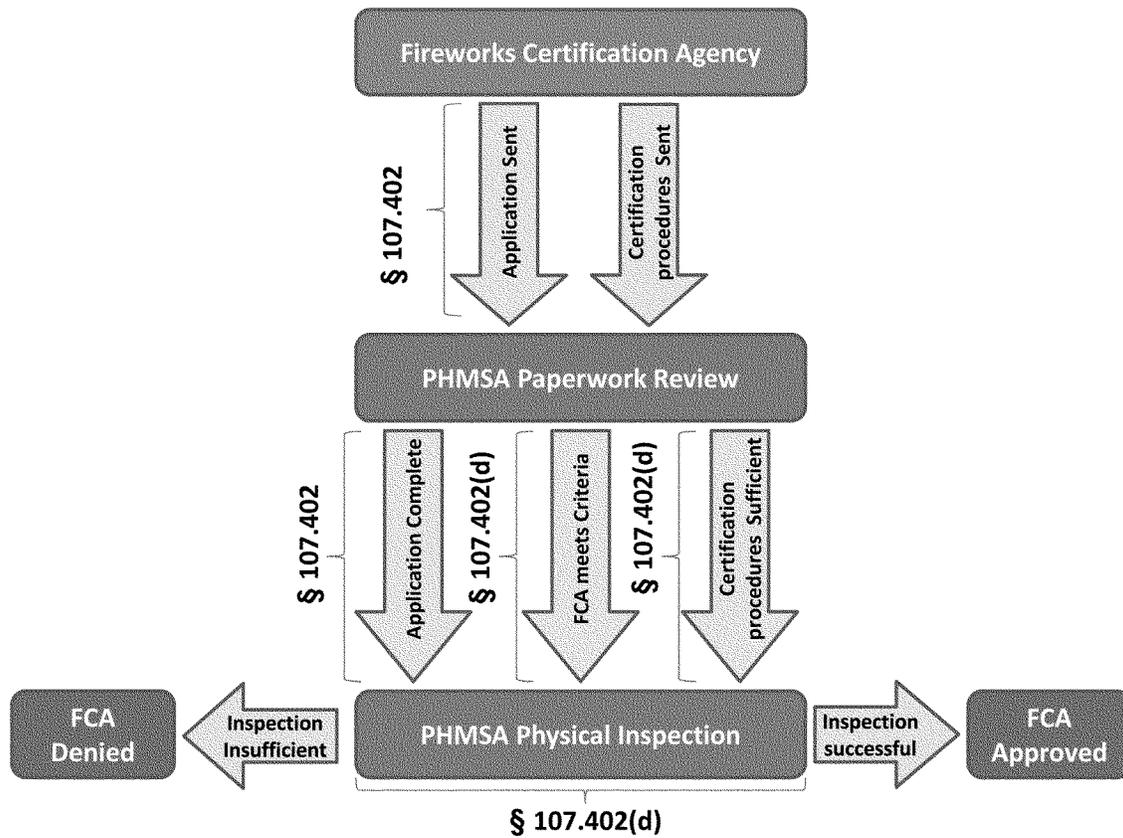
The process for applying for an approval to operate as a DOT-approved FCA will be found in the proposed revised § 107.402 entitled "Application for designation as a certification agency." General application requirements for designation as a certification agency will be moved to § 107.402(b). No new general application requirements are being proposed in this NPRM. Application requirements specific to Packing and Lighter Certification Agencies will be moved to § 107.402(c). No new application requirements specific to Packing and Lighter Certification Agencies are being proposed in this NPRM. Application requirements to become a DOT-approved FCA will be found in the proposed § 107.402(d).

To clarify and provide consistency in the procedural process for designation as a certification agency, the subpart E heading will be entitled "Designation of Certification Agencies." The words "as an approval or" will be removed from § 107.402. The word "approval" will be replaced with "certification" in the § 107.403 heading.

Reconsideration for a denial of designation as a fireworks certification agency will be found in § 107.403(c), which will be revised to provide that the procedural requirements of subpart H of this part apply to the process for reconsideration of denials of designations. A new subparagraph (d) will be added to § 107.403 to provide that the procedural requirements of subpart H of this part will also apply to the process for modification, suspension, and termination of designations. Section 107.405 will be deleted and reserved.

An overview of the proposed process to be recognized by PHMSA as a DOT-approved FCA is detailed in Figure 1 below.

Figure 1: Proposed Fireworks Certification Agency Approval Process



*Alternative Process for Division 1.4G Consumer Fireworks*

The procedures for a manufacturer of Division 1.4G consumer fireworks or its U.S. designated agent to submit an application for certification to a DOT-approved FCA will be specified in the

new § 173.65(a). These requirements parallel those currently in § 173.56(j); however, they address certification by a DOT-approved FCA, as opposed to PHMSA approval, and describe that fireworks utilizing this review process will be issued an FX number, in lieu of an EX number. The current approval

process will continue to be available; however, manufacturers and their U.S. designated agents may voluntarily use the FCA process as an alternative.

Diagrams of the current (Figure 2) and proposed (Figure 3) consumer fireworks application processes are shown below.

Figure 2: Current Division 1.4G Consumer Firework Review Process

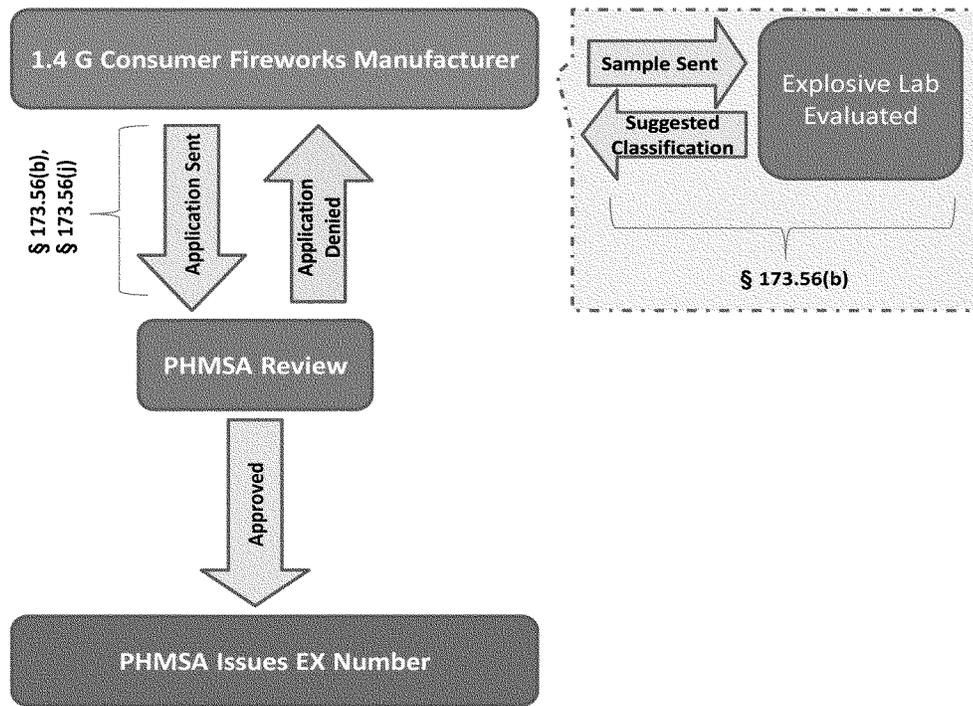
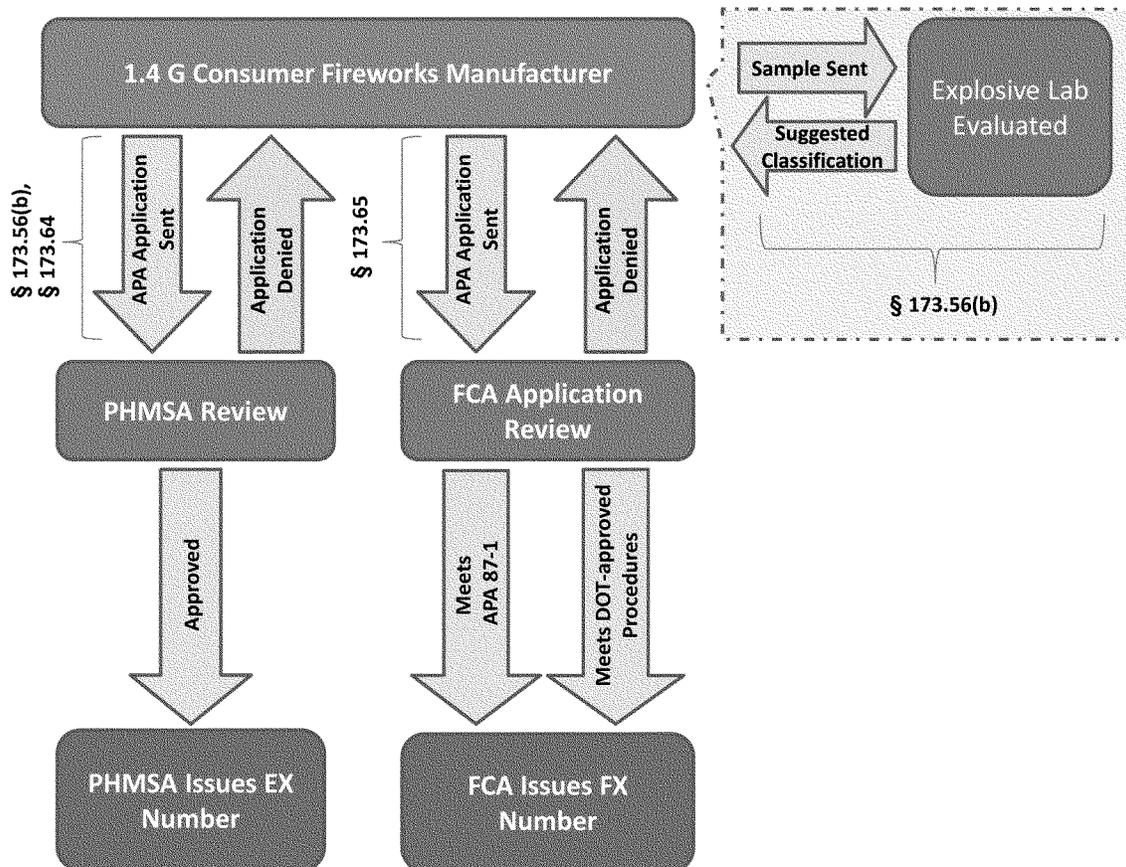


Figure 3: Proposed Division 1.4G Consumer Firework Review Process



### Reporting and Recordkeeping Requirements

DOT-approved FCA reporting requirements on certification activities will be found in § 107.402(d)(8). Recordkeeping requirements requiring the manufacturer, importer, and fireworks certification agency to maintain a record or an electronic image of the record demonstrating compliance with § 173.65 will be found in § 173.65(b).

## V. Regulatory Analyses and Notices

### A. Statutory/Legal Authority for This Rulemaking

This notice of proposed rulemaking (NPRM) is published under the authority of the Federal Hazardous Materials Transportation Law, 49 U.S.C. 5101 *et seq.* Section 5103(b) authorizes the Secretary to prescribe regulations for the safe transportation, including security, of hazardous material in intrastate, interstate, and foreign commerce. This NPRM provides an alternative to the current process for approving Division 1.4G consumer fireworks more quickly and efficiently, without compromising safety. Furthermore, section 5120(b) authorizes the Secretary of Transportation to ensure that, to the extent practicable, regulations governing the transportation of hazardous materials in commerce are consistent with standards adopted by international authorities.

### B. Executive Order 13610, Executive Order 13563, Executive Order 12866, and DOT Regulatory Policies and Procedures

This NPRM is not considered a significant regulatory action under section 3(f) Executive Order 12866 and, therefore, was not reviewed by the Office of Management and Budget (OMB). The proposed rule is not considered a significant rule under the Regulatory Policies and Procedures order issued by the U.S. Department of Transportation (44 FR 11034).

Executive Order 13563 is supplemental to and reaffirms the principles, structures, and definitions governing regulatory review that were established in Executive Order 12866 Regulatory Planning and Review of September 30, 1993. Executive Order 13563, issued January 18, 2011, notes that our nation's current regulatory system must not only protect public health, welfare, safety, and our environment but also promote economic growth, innovation, competitiveness,

and job creation.<sup>7</sup> Further, this executive order urges government agencies to consider regulatory approaches that reduce burdens and maintain flexibility and freedom of choice for the public. In addition, federal agencies are asked to periodically review existing significant regulations, retrospectively analyze rules that may be outmoded, ineffective, insufficient, or excessively burdensome, and modify, streamline, expand, or repeal regulatory requirements in accordance with what has been learned.

Executive Order 13610, issued May 10, 2012, urges agencies to conduct retrospective analyses of existing rules to examine whether they remain justified and whether they should be modified or streamlined in light of changed circumstances, including the rise of new technologies.<sup>8</sup>

By building off of each other, these three Executive Orders require agencies to regulate in the "most cost-effective manner," to make a "reasoned determination that the benefits of the intended regulation justify its costs," and to develop regulations that "impose the least burden on society."

PHMSA has evaluated our fireworks approval program for effectiveness and identified areas that could be modified to enhance the program and increase flexibility for the regulated community. In this NPRM, the proposed amendments to the HMR will not impose increased compliance costs on the regulated industry. By proposing to amend the HMR to allow for an alternative to the approval process for Division 1.4G consumer firework devices, PHMSA will reduce regulatory burden and increase flexibility to industry, while maintaining an equivalent level of safety.

A summary of the regulatory evaluation used to support the proposals presented in this NPRM are discussed below.

### Regulatory Evaluation

For the regulatory evaluation of this NPRM, PHMSA assumes:

- Between 50 and 90 percent of applicants will choose to file a Division 1.4G consumer fireworks application with a DOT-approved FCA instead of filing an application with PHMSA.
- Domestic manufacturers and importers of Division 1.4G fireworks that participate in the voluntary CPSC Domestic Testing Program will choose certification by a DOT-approved FCA.

<sup>7</sup> See <http://www.whitehouse.gov/the-press-office/2011/01/18/improving-regulation-and-regulatory-review-executive-order>.

<sup>8</sup> See <http://www.gpo.gov/fdsys/pkg/FR-2012-05-14/pdf/2012-11798.pdf>.

- The existing DOT-approved explosive test laboratories will likely apply for approval as a DOT-approved FCA.

- A 10-year timeframe to outline, quantify, and monetize the costs and benefits of the proposal and to demonstrate the net effects of the proposal

PHMSA's current fireworks approval process has proven effective in achieving a high level of transportation safety. This high level of transportation safety is demonstrated by the fact that no transportation incidents resulting in death or serious injury have been attributed to the transport of consumer fireworks in the past 40 years. While continuing to maintain this high level of safety, we expect the implementation of the proposals in this NPRM will result in the benefits outweighing the costs.

We anticipate the primary costs will be (1) costs attributed to the proposed five year recordkeeping requirement; and (2) potential fees assessed by the DOT-approved FCAs for certification services. The recordkeeping costs will apply to DOT-approved FCAs, manufacturers that choose certification by a DOT-approved FCA, and importers of fireworks certified by a DOT-approved FCA. The proposed recordkeeping requirement is similar to the requirement that requires participants in the voluntary CPSC Domestic Testing Program keep a certification of compliance with CPSC standards for three years. This documentation contains much of the same information PHMSA proposes to require. Assuming the domestic manufacturers and importers of Division 1.4G consumer fireworks that participate in the voluntary CPSC Domestic Testing Program will choose certification by a DOT-approved FCA, we anticipate the recordkeeping costs will be minimal. While the proposed recordkeeping requirement is similar to CPSC's recordkeeping requirement, PHMSA acknowledges that the retention requirement being two years longer than CPSC's requirement may impose some cost. Also, there may be recordkeeping costs for those who do not participate in the voluntary CPSC Domestic Testing Program.

PHMSA assumes that a DOT-approved FCA will likely assess an explicit cost for its certification services and fireworks manufacturers will individually consider their business' potential to benefit from expedited processing against the expected costs of this certification fee. PHMSA anticipates the benefits of certification derived from the expedited processing of consumer fireworks applications,

resulting in faster time to market for each firework device, outweighs the cost of any fees assessed by the DOT-approved FCA. PHMSA also anticipates these benefits will be realized without diminishing the exemplary transportation safety record that Division 1.4G consumer fireworks have demonstrated over the past forty years. The benefit-cost ratio for this NPRM is estimated to be between 3.70 and 3.71. These benefit and cost figures depend on the assumptions mentioned above.

Total annual benefits derived from this NPRM are expected to be approximately between \$14.5 and 26.5 million, and total annual costs are expected to be approximately between \$4 and \$7 million with total annual net benefits of approximately between \$11 and \$19 million. Based on this net positive value, we conclude that adopting the proposed requirements will result in an increase in overall societal welfare.

The 10-year present value of the net benefits is approximately \$80 million to

\$143 million (discounted at a 3 percent rate) or \$55 million to \$98 million (discounted at a 7 percent rate). We expect adopting this proposal will make regulation of hazardous materials more efficient, provide regulatory relief to industry, and have no negative effect on the safe transportation of hazardous materials in the United States. A summary of the annual costs and benefits and calculated annual net benefits is displayed in the table below.

ANNUAL NET BENEFITS<sup>9</sup>

	Low redirected application rate (50%)	High redirected application rate (90%)
<b>BENEFITS</b>		
Expected Annual Private-Sector Benefits of Expedited Verification .....	\$14,680,000	\$26,430,000
<b>TOTAL ANNUAL BENEFITS</b> .....	<b>14,680,000</b>	<b>26,430,000</b>
<b>COSTS</b>		
<b>Record Retention Costs:</b>		
Costs of 2 Additional Years of Paper Record Retention, All U.S. Importers per year .....	10,200	58,000
Cost for Required Electronic Storage Space, All U.S. Importers and Manufacturers per year .....	Negligible	Negligible
<b>Total Annual Record Retention Costs</b> .....	<b>10,200</b>	<b>58,000</b>
<b>FCA Processing Costs:</b>		
Costs of application processing conducted by FCAs <sup>10</sup> .....	3,937,500	7,087,500
<b>Total Annual FCA Processing Costs</b> .....	<b>3,937,500</b>	<b>7,087,500</b>
<b>TOTAL ANNUAL COSTS</b> .....	<b>3,947,700</b>	<b>7,145,500</b>
<b>TOTAL ANNUAL NET BENEFITS</b> .....	<b>10,732,300</b>	<b>19,284,500</b>

C. Executive Order 13132

This proposed rule has been analyzed in accordance with the principles and criteria contained in Executive Order 13132 (“Federalism”), and the President’s memorandum on “Preemption” published in the **Federal Register** on May 22, 2009 (74 FR 24693). This proposed rule will preempt State, local, and Indian tribe requirements but does not propose any regulation that has substantial direct effects on the States, the relationship between the national government and the States, or the distribution of power and responsibilities among the various levels of government. Therefore, the consultation and funding requirements of Executive Order 13132 do not apply.

The Federal hazardous materials transportation law, 49 U.S.C. 5101–5128, contains an express preemption provision (49 U.S.C. 5125 (b)) that preempts State, local, and Indian tribe requirements on the following subjects:

- (1) The designation, description, and classification of hazardous materials;
- (2) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;
- (3) The preparation, execution, and use of shipping documents related to hazardous materials and requirements related to the number, contents, and placement of those documents;
- (4) The written notification, recording, and reporting of the unintentional release in transportation of hazardous material; and
- (5) The design, manufacture, fabrication, marking, maintenance, recondition, repair, or testing of a packaging or container represented, marked, certified, or sold as qualified

for use in transporting hazardous material.

This proposed rule addresses all the covered subject areas above. If adopted as final, this rule will preempt any State, local, or Indian tribe requirements concerning these subjects unless the non-Federal requirements are “substantively the same” as the Federal requirements. Furthermore, this proposed rule is necessary to update, clarify, and provide relief from regulatory requirements.

Federal hazardous materials transportation law provides at § 5125(b)(2) that, if DOT issues a regulation concerning any of the covered subjects, DOT must determine and publish in the **Federal Register** the effective date of Federal preemption. The effective date may not be earlier than the 90th day following the date of issuance of the final rule and not later than two years after the date of issuance. PHMSA has determined that the effective date of Federal preemption for

<sup>9</sup> Figures are rounded.

<sup>10</sup> Cost calculated by multiplying the estimated cost of \$700 per application by number of Division 1.4G consumer firework applications redirected to an FCA (i.e. for 50% redirected 5,625 × \$700 and for 90%.

these requirements will be one year from the date of publication of a final rule in the **Federal Register**.

#### D. Executive Order 13175

This NPRM has been analyzed in accordance with the principles and criteria contained in Executive Order 13175 (“Consultation and Coordination with Indian Tribal Governments”). Because this NPRM does not significantly or uniquely affect the communities of the Indian tribal governments and does not impose substantial direct compliance costs, the funding and consultation requirements of Executive Order 13175 do not apply.

#### E. Regulatory Flexibility Act, Executive Order 13272, and DOT Procedures and Policies

The Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) requires an agency to review regulations to assess their impact on small entities unless the agency determines that a rule is not expected to have a significant impact on a substantial number of small entities. The total number of U.S. importers that are expected to be impacted by the proposed rulemaking is estimated to be between 62 and 206. PHMSA chose to use a range to reflect an uncertainty in the number of U.S. importers. This uncertainty is a result of the high turnover in the fireworks industry resulting in large year-to-year fluctuations in the number of importers. This range is a result of combining estimated import data with data provided by a consumer fireworks trade association. The figure of 62 was derived from import data obtained from a publically available business directory and PHMSA’s approvals database; while the figure of 206 was derived from statistics provided by AFSL, a consumer fireworks trade association. Specifically, the figure of 206 is derived from the AFSL Consumer Fireworks Membership list that shows 175 members. AFSL claims to represent 85 percent of all U.S. consumer fireworks importers in the U.S., therefore, we calculated a total of 206 ( $175/.85 = 206$ ). PHMSA believes the actual number of U.S. importers lies somewhere between 62 and 206. PHMSA estimates the number of U.S. manufacturers to be five, based on the number of hazmat registrants. This results in a range from 67 to 211 U.S. manufacturers and importers. PHMSA seeks comment specifically on the accuracy of these numbers.

The proposed rule provides an additional, voluntary option for manufacturers to apply to a DOT-approved FCA for certification of Division 1.4 consumer fireworks, in lieu

of submitting an application to PHMSA for approval. The expected costs associated with this rulemaking relate to recordkeeping since copies of documentation will have to be retained for two additional years over current practice (for U.S. importers and fireworks manufacturers who elect to examine and certify new devices with an FCA instead of seeking an approval from PHMSA). Fireworks manufacturers may pay fees assessed by FCAs for certification services. PHMSA assumes that most will see the benefits of FCA certification as justifying the fees involved. However, the costs are voluntary costs.

Benefits of the proposed certification option will be derived from the expedited processing of consumer fireworks applications, resulting in faster time to market for each firework device. Benefits may be realized from the reduction in PHMSA’s approvals application workload, which allows for administrative cost savings and more resources for PHMSA Approvals and Permits staff. These resources may allow for additional scrutiny to higher risk hazardous materials approvals applications. Total annual benefits are expected to be between approximately \$14.5 million and \$26.5 million, and total annual costs are expected to be approximately between \$4 and \$7 million, resulting in total annual net benefits of between approximately \$11 million and \$19 million.

Overall, by proposing increased regulatory flexibility, this proposed rule should reduce the compliance burden on the regulated industry, including small entities, without compromising transportation safety. Therefore, we certify that this proposed rulemaking will not have a significant or negative economic impact on a substantial number of small entities. Further information on the estimates and assumptions used to evaluate the potential impacts to small entities is available in the Regulatory Impact Assessment that has been placed in the public docket for this rulemaking. In this notice, PHMSA is soliciting comments on the number of affected entities and the preliminary conclusion that the proposals in this NPRM will not cause a significant economic impact on a substantial number of small entities.

This notice has been developed in accordance with Executive Order 13272 (“Proper Consideration of Small Entities in Agency Rulemaking”) and DOT’s procedures and policies to promote compliance with the Regulatory Flexibility Act to ensure that potential impacts of draft rules on small entities are properly considered.

#### F. Paperwork Reduction Act

PHMSA currently has an approved information collection under OMB Control Number 2137–0557, entitled “Approvals for Hazardous Materials,” with an expiration date of May 31, 2014. While this NPRM may result in a slight increase in the annual burden and cost to OMB Control Number 2137–0557 for proposed minor record-keeping requirements under §§ 173.64 and 173.65, this NPRM should result in a decrease in the burden on the fireworks industry by increasing regulatory flexibility, which will provide manufacturers of Division 1.4 consumer fireworks with an alternative that should be more efficient than the current approval process.

Under the Paperwork Reduction Act of 1995, no person is required to respond to an information collection unless it has been approved by OMB and displays a valid OMB control number. Section 1320.8(d), title 5, Code of Federal Regulations requires that PHMSA provide interested members of the public and affected agencies an opportunity to comment on information and recordkeeping requests.

This notice identifies revised information collection requests that PHMSA will submit to OMB for approval based on the requirements in this proposed rule. PHMSA has developed burden estimates to reflect changes in this proposed rule and estimates that the information collection and recordkeeping burdens will be revised as follows:

OMB Control No. 2137–0557:

*Increase in Annual Number of Respondents:* 211.

*Increase in Annual Responses:* 5,175.

*Increase in Annual Burden Hours:* 430.

*Increase in Annual Burden Costs:* \$14,875.

PHMSA specifically requests comments on the information collection and recordkeeping burdens associated with developing, implementing, and maintaining these requirements for approval under this proposed rule.

Requests for a copy of this information collection should be directed to Steven Andrews or T. Glenn Foster, Office of Hazardous Materials Standards (PHH–12), Pipeline and Hazardous Materials Safety Administration, 1200 New Jersey Avenue SE., Washington, DC 20590–0001, Telephone (202) 366–8553.

Address written comments to the Dockets Unit as identified in the **ADDRESSES** section of this rulemaking. We must receive comments regarding information collection burdens prior to the close of the comment period identified in the **DATES** section of this

rulemaking. In addition, you may submit comments specifically related to the information collection burden to the PHMSA Desk Officer, Office of Management and Budget, at fax number (202) 395-6974.

#### G. Regulation Identifier Number (RIN)

A regulation identifier number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross-reference this action with the Unified Agenda.

#### H. Unfunded Mandates Reform Act of 1995

This proposed rule does not impose unfunded mandates under the Unfunded Mandates Reform Act of 1995. It does not result in costs of \$141.3 million or more to either state, local or tribal governments, in the aggregate, or to the private sector, and is the least burdensome alternative that achieves the objective of the rule.

#### I. Environmental Assessment

The National Environmental Policy Act of 1969 (NEPA), as amended (42 U.S.C. 4321-4347), and implementing regulations by the Council on Environmental Quality (40 CFR part 1500) require Federal agencies to consider the consequences of Federal actions and prepare a detailed statement on actions that significantly affect the quality of the human environment.

The purpose of this rulemaking is to allow for an alternative to the approval process for Division 1.4G consumer fireworks. The alternatives considered in the environmental analysis include: (1) the proposed action, that is, permitting an alternative process for Division 1.4G consumer fireworks to be certified by a DOT-approved FCA; and (2) the "no action" alternative, meaning that the regulatory scheme will stay the same and the proposed new alternative will not be implemented. PHMSA believes that both alternatives present little or no environmental impact on the quality of the human environment because both alternatives deal with the processing of applications. Furthermore, the proposed amendments only affect the authorization process that deems Division 1.4G consumer fireworks safe for transport and has no impact on any other transport requirements (e.g. packaging, hazard communication, etc.). The proposed action would provide an additional application process that would not impact the exemplary safety

record that Division 1.4G consumer fireworks have demonstrated over the past forty years. Therefore, PHMSA has initially determined that the implementation of the proposed rule will not have any significant impact on the quality of the human environment. PHMSA, however, invites comments about environmental impacts that the proposed rule might pose.

#### J. Privacy Act

Anyone is able to search the electronic form of all comments received into any of our dockets by the name of the individual submitting the comment (or signing the comment, if submitted on behalf of an association, business, labor union, etc.). You may review DOT's complete Privacy Act Statement in the **Federal Register** published on April 11, 2000 (Volume 65, Number 70; Pages 19477-78) or you may visit <http://www.dot.gov>.

#### K. International Trade Analysis

Under E.O. 13609, agencies must consider whether the impacts associated with significant variations between domestic and international regulatory approaches are unnecessary or may impair the ability of American business to export and compete internationally. In meeting shared challenges involving health, safety, labor, security, environmental, and other issues, international regulatory cooperation can identify approaches that are at least as protective as those that are or will be adopted in the absence of such cooperation. International regulatory cooperation can also reduce, eliminate, or prevent unnecessary differences in regulatory requirements.

Similarly, the Trade Agreements Act of 1979 (Pub. L. 96-39), as amended by the Uruguay Round Agreements Act (Pub. L. 103-465), prohibits Federal agencies from establishing any standards or engaging in related activities that create unnecessary obstacles to the foreign commerce of the United States. For purposes of these requirements, Federal agencies may participate in the establishment of international standards, so long as the standards have a legitimate domestic objective, such as providing for safety, and do not operate to exclude imports that meet this objective. The statute also requires consideration of international standards and, where appropriate, that they be the basis for U.S. standards.

PHMSA participates in the establishment of international standards in order to protect the safety of the American public. We have assessed the effects of the proposed rule, and find that because the proposed alternative

process mirrors the current approval process, it will not cause unnecessary obstacles to foreign trade. Accordingly, this rulemaking is consistent with Executive Order 13609 and PHMSA's obligations under the Trade Agreement Act, as amended.

#### L. National Technology Transfer and Advancement Act

The National Technology Transfer and Advancement Act of 1995 (15 U.S.C. 272 note) directs federal agencies to use voluntary consensus standards in their regulatory activities unless doing so would be inconsistent with applicable law or otherwise impractical. Voluntary consensus standards are technical standards (e.g. specification of materials, test methods, or performance requirements) that are developed or adopted by voluntary consensus standard bodies.

This proposed rulemaking involves one technical standard: American Pyrotechnics Association (APA), APA Standard 87-1 Standard for Construction and Approval for Transportation of Fireworks, Novelties, and Theatrical Pyrotechnics, December 1, 2001 version. This technical standard is listed in 49 CFR 171.7.

## VI. List of Subjects

### 49 CFR Part 107

Administrative practice and procedure, Hazardous materials transportation, Penalties, Reporting and recordkeeping requirements.

### 49 CFR Part 172

Education, Hazardous materials transportation, Hazardous waste, Labeling, Markings, Packaging and containers, Reporting and recordkeeping requirements.

### 49 CFR Part 173

Hazardous materials transportation, Packaging and containers, Radioactive materials, Reporting and recordkeeping requirements, Uranium.

In consideration of the foregoing, 49 CFR chapter I is proposed to be amended as follows:

## PART 107—HAZARDOUS MATERIALS PROGRAM PROCEDURES

1. The authority citation for part 107 continues to read as follows:

**Authority:** 49 U.S.C. 5101-5128, 44701; Pub. L. 101-410 section 4 (28 U.S.C. 2461 note), Pub. L. 104-121 sections 212-213; Pub. L. 104-134 section 31001; 49 CFR 1.45 and 1.53.

2. In Part 107, revise subpart E to read as follows:

**Subpart E—Designation of Certification Agency**

**§ 107.402 Application for designation as a certification agency.**

(a) Any person seeking designation as a certification agency must apply in writing to the Associate Administrator for Hazardous Materials Safety (PHH-32), Department of Transportation, East Building, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

Alternatively, the application with any attached supporting documentation in an appropriate format may be submitted by facsimile (fax) to: (202) 366-3753 or (202) 366-3308 or by electronic mail (email) to: *approvals@dot.gov*. Each application must be signed and certified to be correct by the applicant or, if the applicant is an organization, by an authorized officer or official representative of the organization. Any false statement or representation, or the knowing and willful concealment of a material fact, may subject the applicant to prosecution under the provisions of 18 U.S.C. 1001, and result in the denial or termination of a designation.

(b) Each application for designation as a certification agency must be in English and include the following information:

(1) Name and address of the applicant, including place of incorporation if a corporation. In addition, if the applicant is not a resident of the United States, the name and address of a permanent resident of the United States designated in accordance with § 105.40 to serve as agent for service of process.

(2) A statement that the applicant will allow the Associate Administrator or a designated official to inspect its records and facilities in so far as they relate to the certification activities and will cooperate in the conduct of such inspections.

(3) Any additional information relevant to the applicant's qualifications, if requested by the Associate Administrator.

(4) Information required by the provisions in subpart H of this part.

(c) Packaging and Lighter Certification Agencies. In addition to the requirements in (b), the application must include the following information:

(1) A listing, by DOT specification (or special permit) number, or U.N. designation, of the types of packagings for which certification authority is sought.

(2) A personnel qualifications plan listing the qualifications that the applicant will require of each person to be used in the performance of each packaging certification function. As a

minimum, these qualifications must include:

(i) The ability to review and evaluate design drawings, design and stress calculations;

(ii) A knowledge of the applicable regulations of subchapter C of this chapter and, when applicable, U.N. standards; and

(iii) The ability to conduct or monitor and evaluate test procedures and results; and

(iv) The ability to review and evaluate the qualifications of materials and fabrication procedures.

(3) A statement that the applicant will perform its functions independent of the manufacturers and owners of the packagings concerned.

(4) If the applicant's principal place of business is in a country other than the United States, a copy of the designation from the Competent Authority of that country delegating to the applicant an approval or designated agency authority for the type of packaging for which a DOT designation is sought, and a statement that the Competent Authority also delegates similar authority to U.S. Citizens or organizations having designations under this subpart from PHMSA.

(d) Fireworks Certification Agency. Prior to reviewing, and certifying Division 1.4G consumer fireworks for compliance with APA Standard 87-1 as specified in part 173 of this chapter, a person must apply to, and be approved by, the Associate Administrator to act as a firework certification agency. A person approved as a firework certification agency is not a PHMSA agent or representative. In addition to (b), the application must include the following information:

(1) Name, address, and country of each facility where Division 1.4G consumer fireworks test results and application materials are reviewed and certified;

(2) Detailed description of the applicant's qualifications and ability to inspect, review, and certify that the requirements specified by part 173 of this chapter have been met. At a minimum, these qualifications must include ability to:

(i) Review and evaluate design drawings, fabrication procedures, and applications to certify that they are in accordance with the APA Standard 87-1; and

(ii) Evaluate thermal stability test procedures and results.

(3) Detailed description of the operating procedures to be used by the firework certification agency to review, and certify that a Division 1.4G consumer fireworks application meets

the requirements specified by part 173 of this chapter;

(4) Name, address, and principal business activity of each person having any direct or indirect ownership interest in the applicant greater than three percent and any direct or indirect ownership interest in each subsidiary or division of the applicant;

(5) Name and a statement of qualifications of each individual the applicant proposes to employ to inspect, review, and certify test results and certify that application materials comply with APA Standard 87-1;

(6) A statement that the applicant will perform its functions independent of the manufacturers, transporters, importers, and owners of the fireworks; and

(7) A signed certification declaring that the information provided in the approval application is true and correct and the application has not been submitted to any other entity, and the date on which this certification was signed.

(8) If approved, the results of fireworks certification evaluation must be submitted to PHMSA on a schedule and in a manner specified in the DOT-issued designation approval.

\* \* \* \* \*

**§ 107.403 Designation of certification agencies.**

\* \* \* \* \*

(c) Within 30 days of an initial denial of an application under paragraph (b) of this section, the application may file an amended application. If the application for designation is denied, the applicant may file for reconsideration in accordance with the provisions in subpart H of this part.

(d) The provisions in subpart H will apply to the modification, suspension, and termination of an approval submitted under this subpart.

\* \* \* \* \*

**§ 107.405 Termination of certification agencies.**

\* \* \* \* \*

**§ 107.405 [Reserved]**

\* \* \* \* \*

**PART 172—HAZARDOUS MATERIALS TABLE, SPECIAL PROVISIONS, HAZARDOUS MATERIALS COMMUNICATIONS, EMERGENCY RESPONSE INFORMATION, TRAINING REQUIREMENTS, AND SECURITY PLANS**

3. The authority citation for part 172 continues to read as follows:

**Authority:** 49 U.S.C. 5101-5128, 44701; 49 CFR 1.53.

4. In § 172.101, the Hazardous Materials Table is amended by revising entries under “[REVISE]” in the

appropriate alphabetical sequence to read as follows:

**§ 172.101 Purpose and use of hazardous materials table.**  
\* \* \* \* \*

**§ 172.101—HAZARDOUS MATERIALS TABLE**

Sym-bols	Hazardous materials descriptions and proper shipping names	Hazard class or division	Identi-fication Nos.	PG	Label codes	Special provisions (§ 172.102)	(8) Packaging (§ 173.***)			(9) Quantity limitations		(10) Vessel stowage	
							Excep-tions	Non-bulk	Bulk	Passenger aircraft/rail	Cargo aircraft only	Location	Other
(1)	(2)	(3)	(4)	(5)	(6)	(7)	(8A)	(8B)	(8C)	(9A)	(9B)	(10A)	(10B)
[REVISE]													
*	*	*	*	*	*	*	*	*	*	*	*	*	*
Fireworks ..	1.4G	UN 0336	II	1.4G	108	65	62	None	Forbidden	75 kg	06		
*	*	*	*	*	*	*	*	*	*	*	*	*	*

5. In § 172.320, paragraph (b) and paragraph (d) are revised to read as follows:

**§ 172.320 Explosive hazardous materials.**  
\* \* \* \* \*

(b) Except for fireworks approved in accordance with § 173.64 of this subchapter, a package of Class 1 materials may be marked as follows, in lieu of the EX number required by paragraph (a) of this section:

(1) With a national stock number issued by the Department of Defense or identifying information, such as a product code required by regulations for commercial explosives specified in 27 CFR part 555, if the national stock number or identifying information can be specifically associated with the EX number assigned; or

(2) For Division 1.4G consumer fireworks, with a FX number issued by a fireworks certification agency approved in accordance with 49 CFR part 107 subpart E and classified in accordance with § 173.65.

(d) The requirements of this section do not apply if the EX number, FX number, product code or national stock number of each explosive item described under a proper shipping description is shown in association with the shipping description required by § 172.202(a) of this part. Product codes and national stock numbers must be traceable to the specific EX number assigned by the Associate Administrator or FX number assigned by a DOT approved fireworks certification agency.

**PART 173—SHIPPERS—GENERAL REQUIREMENTS FOR SHIPMENTS AND PACKAGINGS**

6. The authority citation for part 173 continues to read as follows:

**Authority:** 49 U.S.C. 5101–5128, 44701; 49 CFR 1.45, 1.53.

7. In § 173.56, the introductory text for paragraph (b) is revised to read as follows, and paragraph (j) is removed and reserved.

**§ 173.56 New explosives—definitions and procedures for classification and approval.**  
\* \* \* \* \*

(b) Examination, classification and approval. Except as provided in §§ 173.64 and 173.65 of this subpart, no person may offer a new explosive for transportation unless that person has specified to the examining agency the ranges of composition of ingredients and compounds, showing the intended manufacturing tolerances in the composition of substances or design of articles which will be allowed in that material or device, and unless it has been examined, classed and approved as follows:

(j) [Reserved]  
\* \* \* \* \*

8. In § 173.59, add new definition for “consumer firework” in appropriate alphabetical sequence to read as follows:

**§ 173.59 Description of terms for explosives.**  
\* \* \* \* \*

*Consumer firework.* Any completed firework device that is packaged in a form intended for use by the public that complies with the construction, performance, chemical composition,

and labeling requirements codified by the U.S. Consumer Product Safety Commission in Title 16, CFR parts 1500 and 1507. A consumer firework does not include firework devices, kits or components banned by the U.S. Consumer Product Safety Commission in 16 CFR 1500.17 (a)(8).

9. Add new section § 173.64 to read as follows:

**§ 173.64 Exceptions for Division 1.3 and 1.4 fireworks.**

(a) Notwithstanding the requirements of § 173.56(b), Division 1.3 and 1.4 fireworks (see § 173.65 for Division 1.4G consumer fireworks) may be classed and approved by the Associate Administrator without prior examination and offered for transportation if the following conditions are met:

(1) The fireworks are manufactured in accordance with the applicable requirements in APA Standard 87–1 (IBR, see § 171.7 of this subchapter);

(2) The device must pass a thermal stability test conducted by a third-party laboratory, or the manufacturer. The test must be performed by maintaining the device, or a representative prototype of a large device such as a display shell, at a temperature of 75 °C (167 °F) for 48 consecutive hours. When a device contains more than one component, those components that could be in physical contact with each other in the finished device must be placed in contact with each other during the thermal stability test;

(3) The manufacturer applies in writing to the Associate Administrator following the applicable requirements in APA Standard 87–1, and is notified in writing by the Associate

Administrator that the fireworks have been classed, approved, and assigned an EX number. Each application must be complete and include all relevant background data and copies of all applicable drawings, test results, and any other pertinent information on each device for which approval is being requested. The manufacturer must sign the application and certify that the device for which approval is requested conforms to APA Standard 87-1, that the descriptions and technical information contained in the application are complete and accurate, and that no duplicate application has been submitted to a DOT-approved fireworks certification agency. If the application is denied, the manufacturer will be notified in writing of the reasons for the denial. The Associate Administrator may require that the fireworks be examined by an agency listed in § 173.56(b)(1).

\* \* \* \* \*

10. Add new section § 173.65 to read as follows.

**§ 173.65 Exceptions for Division 1.4G Consumer Fireworks.**

(a) Notwithstanding the requirements of paragraphs §§ 173.56(b), 173.56(f), 173.56(i), and 173.64, Division 1.4G consumer fireworks may be offered for transportation provided the following conditions are met:

(1) The fireworks are manufactured in accordance with the applicable requirements in APA Standard 87-1 (IBR, see § 171.7 of this subchapter);

(2) The device must pass a thermal stability test. The test must be performed by maintaining the device, or a representative prototype of the device at a temperature of 75 °C (167 °F) for 48 consecutive hours. When a device contains more than one component, those components that could be in physical contact with each other in the finished device must be placed in contact with each other during the thermal stability test;

(3) The manufacturer of the Division 1.4G consumer firework applies in writing to a DOT-approved fireworks certification agency, and is notified in writing by the fireworks certification agency that the firework has been:

(i) Evaluated, and examined, as required, for a Division 1.4G consumer firework;

(ii) Certified that it complies with APA Standard 87-1, and meets the requirements of this section; and

(iii) Assigned an FX number followed by a corresponding certification report identifier (e.g., FX-XXX-YYY, where XXX represents the firework certification agency and YYY represents

the certification report identifier that is traceable to the specific manufacturer and firework device transported).

(4) The manufacturer's application must be complete and include relevant background data, copies of all applicable drawings, test results, and any other pertinent information on each device for which certification is being requested. The manufacturer must sign the application and certify that the device for which certification is requested conforms to APA Standard 87-1, that the descriptions and technical information contained in the application are complete and accurate, and that no duplicate applications have been submitted to PHMSA. If the application is denied, the DOT-approved fireworks certification agency must notify the manufacturer in writing of the reasons for the denial. Following the issuance of a denial from a DOT-approved fireworks certification agency, a manufacturer may submit the denial and original application to PHMSA for reconsideration in accordance with subpart H.

(b) *Recordkeeping requirements.* Following the certification of each Division 1.4G consumer firework as permitted by paragraph (a) of this section, the manufacturer, importer, and fireworks certification agency must maintain a record or an electronic image of the record demonstrating compliance with this section. This record must be accessible at or through its principal place of business and be made available, upon request, to an authorized official of a Federal, State, or local government agency at a reasonable time and location. A copy of this record must be retained for five years after the material is imported. Records complying with firework requirements of other Federal or international agencies may be used to satisfy the recordkeeping requirements of this paragraph to the extent that such records address the recordkeeping components specified in this section. For Division 1.4G consumer fireworks certified by a DOT-approved fireworks certification agency, the record must include:

(1) The FX number of the entity that certified that the firework device complies with APA Standard 87-1, including a certification report identifier that is traceable to the manufacturer and specific firework device transported;

(2) A copy of the approval application submitted to the DOT-approved fireworks certification agency; and

(3) A copy of any certification documentation completed by the fireworks certification agency in accordance with the DOT-approved procedures.

(c) *Hazard Communication.*

Following the certification of each Division 1.4G consumer firework as permitted by paragraph (a) of this section, each package containing a Division 1.4G consumer firework must be marked and labeled in accordance with subpart D and E of part 172.

\* \* \* \* \*

Issued in Washington, DC, on August 24, 2012, under authority delegated in 49 CFR part 106.

**Magdy El-Sibaie,**

*Associate Administrator for Hazardous Materials Safety, Pipeline and Hazardous Materials Safety Administration.*

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**DEPARTMENT OF THE INTERIOR**

**Fish and Wildlife Service**

**50 CFR Part 17**

[Docket No. FWS-R6-ES-2012-0040; 4500030113]

**Endangered and Threatened Wildlife and Plants; 12-Month Finding on a Petition To List the Platte River Caddisfly as Endangered or Threatened**

**AGENCY:** Fish and Wildlife Service, Interior.

**ACTION:** Notice of 12-month petition finding.

**SUMMARY:** We, the U.S. Fish and Wildlife Service (Service), announce a 12-month finding on a petition to list the Platte River caddisfly (*Isonychia plattensis*) as an endangered or threatened species and to designate critical habitat under the Endangered Species Act of 1973, as amended. After review of all available scientific and commercial information, we find that listing the Platte River caddisfly as an endangered or threatened species is not warranted at this time. However, we ask the public to submit to us any new information that becomes available concerning the threats to the Platte River caddisfly or its habitat at any time. **DATES:** The finding announced in this document was made on August 30, 2012.

**ADDRESSES:** This finding is available on the Internet at <http://www.regulations.gov> at Docket Number FWS-R6-ES-2012-0040. Supporting documentation we used in preparing this finding is available for public inspection, by appointment, during normal business hours at the U.S. Fish and Wildlife Service, Nebraska Field